

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DIANE THAYSE, and
BABY THAYSE,

Civil No. 08-1098 (JRT/FLN)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

CANTELLA & CO INC.,
JENNIE DEVLIN,
JAMES FREEMAN, and
PHILLIP McMORROW,

Defendants.

Plaintiff commenced this action on April 18, 2008, by filing a self-styled complaint, and an application seeking leave to proceed in forma pauperis, (“IFP”). (Docket Nos. 1 and 2.) Magistrate Judge Susan Richard Nelson examined those submissions, and found Plaintiff’s complaint to be defective, because it failed to allege sufficient facts to state an actionable claim for relief. Magistrate Judge Nelson also found Plaintiff’s IFP application to be incomplete. Because of those deficiencies, Magistrate Judge Nelson entered an order on April 22, 2008, (Docket No. 5), which informed Plaintiff that her IFP application would be “denied without prejudice.” That order gave Plaintiff an opportunity to file an amended complaint, and to either (a) file an amended IFP application, or (b) pay the \$350 filing fee for this action. Plaintiff was advised that if she did not submit both an amended complaint, and an amended IFP application, (or the \$350 filing fee), within 30 days, it would be recommended that this case be dismissed pursuant to Fed. R. Civ. P. 41(b).¹

¹ After the issuance of Magistrate Judge Nelson’s order, the case was re-assigned to the undersigned Magistrate Judge.

The deadline for complying with the prior order in this case has now passed, and Plaintiff has not satisfied the requirements of that order. Although Plaintiff filed an amended IFP application, (Docket No. 6), she still has not filed an amended complaint. Furthermore, Plaintiff has offered no explanation for her failure to file a new complaint as ordered.

The prior order in this matter clearly required Plaintiff to file not only an amended IFP application, but also an amended complaint. Because Plaintiff has not filed an amended complaint, she has not complied with the order. Therefore, this Court will now recommend, in accordance with the prior order in this case, that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See Henderson v. Renaissance Grand Hotel, No. 07-1426, (8th Cir. 2008), 2008 WL 540172, (unpublished opinion) at *1 (“[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order”); see also Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to “manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases”). The Court will further recommend that Plaintiff’s pending collateral motions, (i.e., the amended IFP application, [Docket No. 6]; the motion for restraining order, [Docket No. 7]; the motion for immediate judgment, [Docket No. 8]; and the motion to appoint counsel, [Docket No. 9]), be summarily denied.

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s application to proceed in forma pauperis, (Docket Nos. 2 and 6), be

DENIED;

2. Plaintiff's motion for a restraining order, (Docket No. 7), be **DENIED**;
3. Plaintiff's motion for immediate judgment, (Docket No. 8), be **DENIED**;
4. Plaintiff's motion to appoint counsel, (Docket No. 9), be **DENIED**; and
5. This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: June 12, 2008

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **July 1, 2008**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.